



ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA-R09-OAR-2022-0651; FRL-10268-02-R9]

Air Plan Approval; California; Eastern Kern Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Eastern Kern Air Pollution Control District (EKAPCD or “the District”) portion of the California State Implementation Plan (SIP). In this action, we are approving one rule submitted by the EKAPCD, governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”).

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further notice, unless the EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0651 at <https://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit

<https://www2.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Po-Chieh Ting, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3191, or by email at

ting.pochieh@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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I. The State’s Submittal

- A. What rule did the State submit?*

Table 1 lists the rule addressed by this action including the dates on which it was adopted by the District and submitted to the EPA by the California Air Resources Board (CARB or “the State”).

Table 1 – Submitted Rule

Rule #	Rule Title	Adopted	Submitted ¹
Rule 210.1A	Major New and Modified Stationary Source Review (MNSR)	8/4/22	10/5/22

CARB’s October 5, 2022 SIP submittal package meets the completeness criteria in 40 CFR part 51, which must be met before formal EPA review. The EPA’s signed notice of proposed rulemaking for our action on this submittal serves as the EPA’s formal completeness determination for this submittal.²

B. Are there other versions of this rule?

There is no previous version of EKAPCD Rule 210.1A in the California SIP. There are other new source review (NSR) rules in the California SIP that apply to the sources to which EKAPCD Rule 210.1A applies, including Rule 210.1, “Standard for Authority to Construct”. Rule 210.1A is intended to satisfy current Federal nonattainment NSR requirements applicable to ozone and PM₁₀ and related visibility program requirements. Other existing SIP-approved NSR rules such as the SIP-approved version of Rule 210.1 will remain in the SIP for the EKAPCD. Rule 210.1A provides that for purposes of its implementation and enforcement, its provisions take precedence over the provisions and requirements in other District rules and regulations (see Subsection I.B, paragraph 2 of Rule 210.1A).

C. What is the purpose of the submitted rule?

¹ The submittal was transmitted to the EPA via a letter from CARB dated October 5, 2022.

² CARB’s May 23, 2018 submittal of a previous version of EKAPCD Rule 210.1A, which was determined to be complete on August 28, 2018, addressed the findings of failure to submit issued by the EPA on February 3, 2017 and December 11, 2017 for the 2008 ozone national ambient air quality standard (NAAQS) regarding nonattainment new source review (NNSR) program requirements for the District (82 FR 9158, 82 FR 58118). That finding of completeness represented the EPA’s determination that the deficiencies that formed the basis for the findings of failure to submit for the 2008 ozone NAAQS had been corrected, and as a result, the related application of the offset sanction and the running of the highway sanction clock were permanently stopped. See 40 CFR 52.31(d)(5).

Rule 210.1A is intended to address the CAA's statutory and regulatory requirements for nonattainment new source review (NNSR) permit programs for major sources emitting nonattainment air pollutants and their precursors located in the areas within the EKAPCD that are designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS).

II. The EPA's Evaluation

A. What is the background for this action?

Because parts of the eastern portion of Kern County (Eastern Kern) are Federal ozone and PM₁₀ nonattainment areas, the CAA requires the District to have a SIP-approved NNSR program for new and modified major sources located in the ozone and PM₁₀ nonattainment areas that are under its jurisdiction. Most recently, the designation of the Eastern Kern area as a Federal ozone nonattainment area for the 2008 and 2015 ozone NAAQS triggered the requirement for the District to develop and submit an updated NNSR program to the EPA for SIP approval. The District's NNSR program must address NNSR requirements for the 1997 ozone NAAQS, the 2008 ozone NAAQS, the 2015 ozone NAAQS, and the 1987 PM₁₀ NAAQS.³

Because the District is designated and classified as Severe nonattainment for the 2008 8-hour ozone NAAQS, the District's NNSR program must satisfy the NNSR requirements applicable to Severe ozone nonattainment areas. Submission of an NNSR program that satisfies the requirements of the Act and the EPA's regulations for Severe ozone nonattainment areas would also satisfy the NNSR program requirements for lower classifications including the Serious and Moderate NNSR program requirements applicable to the District based on its designation and classification for the 2015 and 1997 8-hour ozone NAAQS, respectively. The

³ The relevant nonattainment designation and classification history for the area is provided in our Technical Support Document, which can be found in the docket for this rule.

District's NNSR program must also satisfy the NNSR requirements applicable to Serious PM₁₀ nonattainment areas.⁴

In addition, to implement CAA section 169A, 40 CFR 51.307(b) requires that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area.⁵

B. How is the EPA evaluating the rule?

The EPA reviewed Rule 210.1A for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 110(a)(2)(C), 172(c)(5), 173, 182, and 189; (2) the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in Severe ozone and Serious PM₁₀ nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);⁶ and (5) SIP revisions as set forth in CAA section 110(l)⁷ and 193.⁸ Our review evaluated the submittal for compliance with the NNSR requirements applicable to nonattainment areas designated Severe

⁴ We are not currently evaluating whether Rule 210.1A would satisfy the Federal requirements for NNSR programs for areas with a higher ozone nonattainment classification, nor are we evaluating whether this rule would satisfy the Federal requirements for NNSR programs applicable to areas designated nonattainment for other NAAQS pollutants. If, in the future, the District were to be designated nonattainment for a NAAQS pollutant other than ozone and PM₁₀, the requirements of 40 CFR Part 51, Appendix S would govern NNSR permitting for that pollutant upon the effective date of such designation for purposes of the CAA.

⁵ Such sources are required to perform a visibility impact analysis consistent with the provisions of 40 CFR 51.307(a) and 40 CFR 51.166 (o), (p)(1) through (2) and (q). See 40 CFR 51.307(c). 40 CFR 51.307(d) also provides for states to require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification.

⁶ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under State law to carry out their proposed SIP revisions.

⁷ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

⁸ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

for ozone and Serious for PM₁₀, and ensured that the submittal addressed the NNSR requirements for the 1997, 2008 and 2015 ozone NAAQS as well as the 1987 PM₁₀ NAAQS.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the October 5, 2022 submittal of Rule 210.1A, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rule to the EPA.

With respect to the substantive requirements found in CAA sections 110(a)(2)(C), 172(c)(5), 173, 182, 189 and 40 CFR 51.160-51.165, we have evaluated Rule 210.1A in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant NAAQS, including the 1997, 2008 and 2015 ozone NAAQS as well as the 1987 PM₁₀ NAAQS. We find that Rule 210.1A satisfies these requirements as it applies to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Severe⁹ and for PM₁₀ nonattainment areas classified as Serious. We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 210.1A satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable and have determined in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under State law to carry out these SIP revisions.

⁹ As discussed above, an NNSR program that satisfies the requirements of the Act and the EPA's regulations for Severe ozone nonattainment areas also satisfies the NNSR program requirements for lower classifications, including the Serious and Moderate NNSR program requirements applicable to the District based on its designation and classification for the 2015 and 1997 8-hour ozone NAAQS, respectively.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of Rule 210.1A will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 210.1A will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our Technical Support Document, which can be found in the docket for this rule, contains a more detailed discussion of our analysis of Rule 210.1A.

D. What action is the EPA finalizing?

As authorized in section 110(k)(3) of the Act, the EPA is approving the submitted rule because we believe it fulfills all relevant requirements. We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, 182, 189 and 193, 40 CFR 51.160-51.165, and 40 CFR 51.307. Our action will be codified through revisions to 40 CFR 52.220a (Identification of plan - in part). In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action also revises the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

III. Why is the EPA Using a Direct Final Rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment as the submitted rule fulfills all applicable regulatory requirements and is generally consistent with very similar NNSR rules that the EPA has approved into the California SIP recently for other California air districts, for which the EPA received no public comments. However, in the “Proposed Rules” section of this issue of the *Federal Register*, we are publishing a separate document that will serve as the EPA’s proposed rule to approve the rule submitted by the EKAPCD if adverse comment is received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

If we do not receive timely adverse comment, the direct final approval will be effective without further notice on **[Insert date 60 days after date of publication in the *Federal Register*]**, as discussed above. This will incorporate the rule into the federally enforceable SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of EKAPCD Rule 210.1A, Major New and Modified Stationary Source Review (MNSR), adopted on August 4, 2022, which regulates the issuance of permits for stationary sources. The EPA has made, and will continue to make, this document available electronically through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the CAA.

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: **November 28, 2022.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraph (c)(590) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(590) The following new regulation was submitted on October 5, 2022 by the Governor's designee as an attachment to a letter dated October 5, 2022.

(i) *Incorporation by reference.* (A) Eastern Kern Air Pollution Control District.

(I) Rule 210.1A, Major New and Modified Stationary Source Review (MNSR), adopted on August 4, 2022.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

3. Section 52.281 is amended by revising paragraphs (d)(1) through (6) and adding paragraph (d)(7) to read as follows:

§52.281 Visibility protection.

* * * * *

(d) * * *

(1) Monterey County Air Pollution Control District.

(2) Sacramento County Air Pollution Control District.

(3) Calaveras County Air Pollution Control District.

(4) Mariposa County Air Pollution Control District.

(5) Northern Sierra Air Pollution Control District.

(6) San Diego County Air Pollution Control District.

(7) Eastern Kern Air Pollution Control District.

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[FR Doc. 2022-26361 Filed: 12/2/2022 8:45 am; Publication Date: 12/5/2022]